

# RAJASTHAN HIGH COURT

Mohd. Sharif

Vs.

ADJ No. 2 Sikar

.B. Civil Writ Petition No. 3915 of 2003

(Shiv Kumar Sharma, J.)

08.09.2003

## JUDGMENT

**Shiv Kumar Sharma, J.**

1. The petitioner sought for relief by way of ad interim injunction under Order 39 Rules 1 and 2 Civil Procedure Code. The prayer was rejected by the trial Court as also by the Appellate Court. When the revision preferred against the said orders was also found as not maintainable, the petitioner has to invoke supervisory jurisdiction of this Court under Article 227 of the Constitution.

2. Supervisory jurisdiction under Article 227 can be exercised to keep the subordinate courts within the bounds of their jurisdiction. In *Surya Dev Rai v. Ram Chander Rai* <sup>1</sup> their Lordships of the Supreme Court indicated that amendment by Act No. 46 of 1999 with effect from July, 1, 2002 in Section 115 C.P.C. cannot and does not affect in any manner the jurisdiction of High Court under Article 227 of the Constitution of India. The High Court under its supervisory jurisdiction may intervene where the error is such, as if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice. While exercising jurisdiction the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof.

3. In *Sadhna Lodh v. National Insurance Co.* <sup>2</sup> the Apex Court propounded that where remedy for filing revision under Section 115 C.P.C. is barred, petition under Article 227 of the Constitution would lie.

4. A look at the material on record reveals that the petitioner claims lawful possession

over the shop in question whereas according to defendant Municipal Board Reengus, the petitioner is a trespasser. Substantial questions are required to be investigated. In case of interlocutory injunctions in aid of the plaintiff's right, all that the court usually has to consider is whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve without waiting for the right to be finally established. Where the plaintiff is asserting a right, he should show a strong *prima facie* case, at least, in support of the right which he asserts. Where any doubt exists as to the plaintiff's right, the court, in determining whether an interlocutory injunction should be granted, should take into consideration balance of convenience to the parties and the nature of the injury which the defendant, on one hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The burden to prove that the inconvenience which the plaintiff will suffer by the refusal of injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff. The proceedings pertaining to grant of ad interim are supplemental proceedings. Main purpose of injunction is to preserve the subject matter of the suit in status quo for the time being. While disposing an application for grant of temporary injunction, the court should not go to the extent of deciding the main case of the parties but the order should be a speaking order showing that the court has taken a decision after applying its mind. The discretion vested in court should be exercised on reasons and sound judicial principles.

5. Learned lower Appellate court in the instant case appears to have decided the disputed questions of fact finally. The error of jurisdiction committed by learned lower appellate court if not corrected may become incapable of correction at a later stage and therefore refusal to intervene under Article 227 would result in travesty of justice. But at the same time proceedings under Article 227 cannot be converted into the forum of second Misc. Appeal. It is for the Appellate Court to exercise the jurisdiction vested in it by Order 43 Rule 1 C.P.C. properly and on sound judicial principles.

6. For the reasons aforementioned instead of issuing notice to the Municipal Board Reengus, I dispose of the writ petition in the following terms :

(i) The order dated January, 22, 2002 of the learned Additional District Judge No. 2 , Sikar camp Sri Madhopur stands set aside and the case is remitted back for a fresh decision. Learned Additional District Judge No. 2 , Sikar shall direct Municipal Board Reengus to maintain *status quo* in regard to shop in dispute pending the decision of Misc. Appeal. The Municipal Board Reengus shall be

provided opportunity of hearing and Misc. Appeal shall be disposed of on reasons and sound judicial principles as expeditiously as possible.

(ii) The petitioner is directed to appear before learned Additional District Judge No. 2, Sikar on September 15, 2003 for seeking further instructions.

Petition allowed.

Cases Referred.

1. 2003(2) WLC (SC) Civil 355; 2003(5) Supreme 390
2. 2003 (2) WLC (SC) Civil 255; (2003)3 SCC 524